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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 10, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LUCAS M. CHANEY, individually, and
as guardian ad litem for TC, a minor, and
KATHLEEN CHANEY,

Plaintiffs,

v.

AUTO TRACKERS AND RECOVERY
NORTH, LLC, PATRICK K. WILLIS
COMPANY, INC. and SANTANDER
CONSUMER USA, INC.,

Defendants.

No. 2:19-CV-00272-SAB

**ORDER RE: MOTIONS FOR
SUMMARY JUDGMENT**

Before the Court are Defendant Patrick K. Willis Co.'s Motion for Summary Judgment, ECF No. 31 and Motion for Partial Summary Judgment Regarding Cross-Claims Against Auto Trackers and Recover North LLC, ECF No. 35, as well as its Motion to Strike Plaintiffs' Opposition to Motion for Summary Judgment, ECF No. 82. A videoconference hearing on the motions was held on May 27, 2021. Plaintiffs were represented by Alexander Trueblood and Michael Parker, who appeared by telephone. Defendant Auto Trackers was represented by Sarah Eversole, who appeared by video. Defendant Patrick K. Willis Co. was represented by Marnie Silver and Charles Hausberg, who appeared by video.

ORDER RE: MOTIONS FOR SUMMARY JUDGMENT ~ 1

Motion Standard

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). There is no genuine issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The moving party has the initial burden of showing the absence of a genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party meets its initial burden, the non-moving party must go beyond the pleadings and “set forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 248.

In addition to showing there are no questions of material fact, the moving party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of Wash. Law Sch.*, 233 F.3d 1188, 1193 (9th Cir. 2000). The moving party is entitled to judgment as a matter of law when the non-moving party fails to make a sufficient showing on an essential element of a claim on which the non-moving party has the burden of proof. *Celotex*, 477 U.S. at 323. The non-moving party cannot rely on conclusory allegations alone to create an issue of material fact. *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

When considering a motion for summary judgment, a court may neither weigh the evidence nor assess credibility; instead, “the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.” *Anderson*, 477 U.S. at 255.

Background Facts

Plaintiffs brought this action after their car was repossessed. They allege the repossession was a breach of the peace in violation of Wash. Rev. Code § 62A.9A-609(b)(2), violated the Washington Consumer Protection Act, and violated the Fair Debt Collections Practices Act. ECF No. 1. They also assert Defendants committed

1 assault and battery, and false imprisonment. Plaintiffs are suing the company that
2 held the purchase contract, Defendant Santander Consumer USA, Inc., the
3 company that was hired to repossess the car, Patrick K. Willis Co. (“PK Willis”)
4 and the company that Defendant PK Willis in turn hired to complete the
5 repossession and who actually repossessed the car, Defendant Auto Trackers and
6 Recovery North, LLC (“Auto Trackers”).

7 Defendant PK Willis filed a crossclaim against Defendant Auto Trackers for
8 breach of contract. It is also seeking a declaratory action that Defendant Auto
9 Trackers is required to defend, indemnify, and hold harmless Defendant PK Willis
10 and its client with respect to this lawsuit.

11 On or about August 29, 2018, Plaintiff Lucas Chaney purchased a used
12 vehicle from Autonation Chevrolet Spokane Valley, in Spokane, Washington, that
13 he intended to use primarily for personal, family, or household purposes. Plaintiff
14 and the dealership entered into a written agreement entitled “Retail Installment
15 Sale Contract Simple Finance Charge,” which granted the dealership a security
16 interest in the vehicle and provided for installment payments on the amount
17 financed. The dealership then assigned this contract, including the security interest,
18 to Defendant Santander. At some point, Defendant Santander concluded that
19 Plaintiffs defaulted on their payments and hired Defendant PK Willis to repossess
20 Plaintiffs’ vehicle. Defendant PK Willis then hired Defendant Auto Trackers to
21 repossess the vehicle.

22 On or about April 29, 2019, a tow truck driver employed by Defendant Auto
23 Trackers arrived unannounced at Plaintiffs’ home and, using his truck, blocked
24 them from leaving their driveway. Plaintiff Lucas Chaney immediately objected to
25 the repossession and told the tow truck driver to leave. The tow truck driver
26 refused and ordered Mr. Chaney to tell his wife to back up the vehicle onto his
27 towing apparatus. Mr. Chaney refused.

28 The tow truck driver then opened the back passenger door and tried to get to

1 nine-year old TC. When TC screamed, the repo man slammed the door on TC's
2 leg. He then knocked Mr. Chaney to the ground, who was on crutches from a
3 recent hip surgery. Frightened by the violence, Plaintiffs stayed in their vehicle,
4 locked the doors, and called the police. Defendant Auto Trackers' tow truck driver
5 remained outside the vehicle pounding on the windows, cursing and yelling that he
6 owned the vehicle, and calling Mr. Chaney a "deadbeat" and a "fucker." He placed
7 various objects around the vehicle so Plaintiffs could not leave.

8 The police arrived at the scene, and the vehicle was eventually taken into
9 Defendant Auto Trackers' possession.

**1. Defendant PK Willis' Motion for Partial Summary Judgment
Regarding Cross-Claims Against Auto Trackers and Recover North
LLC, ECF No. 31**

In its cross-claims, Defendant PK Willis asserts that Defendant Auto Trackers agreed in a written contract to defend and indemnify Defendant PK Willis in this type of case. Defendant PK Willis asserts that it tendered defense of Plaintiffs' claims to Defendant Auto Trackers, but Defendant Auto Trackers disavowed any obligation to defend. Defendant PK Willis is seeking summary judgment on its declaratory judgment claim and on the liability aspect of the breach of contract claim. Defendant Auto Trackers denies any responsibility to defend or indemnify.

Background Facts

22 Defendant PK Willis provides nationwide asset recovery services to lenders
23 and contracts with different local companies to effectuate car repossession. In
24 2014, Defendant PK Willis and Defendant Auto Trackers entered into a Master
25 Service Agreement. Section 4 of the Master Service Agreement provides, as
26 follows:

Service Provider hereby agrees to defend, indemnify and hold PKW and each and every Client harmless from any and all claims, demands, damages, liability, causes of action, actions, judgments, awards, fines,

penalties, costs, expenses of any kind and nature whatsoever, contingent and liquidated (including attorneys' fees) arising from or relating to Service Provider's acts or omissions in connection with attempting to repossess or recover, or the actual repossession or recovery of collateral pursuant to any Assignments provided or referred to Service Provider by PKW, including but not limited to any damage or claim for damage to the repossessed collateral while such collateral is in the care, control or custody of Service Provider, excepting only such claims as are the result of the sole active negligence or intentional misconduct of PKW or a Client.

ECF No. 76, Ex. A.

Section 4 also provides that “Service Provider’s obligations under this Agreement shall include the duty to defend and/or pay for the defense of PKW and Clients in any action or other legal proceeding with legal counsel that is acceptable to PKW in its sole and complete discretion.” *Id.*

According to Defendant, after it received notice of the lawsuit and before tendering a defense to Defendant Auto Trackers, it agreed to defend and indemnify Defendant Santander under a separate agreement between the two companies. Defendant Auto Trackers' insurance company, Prime Insurance Co., agreed to defend PK Willis, but it has refused to defend Defendant Santander.

The Master Service Agreement provides that California law applies and neither party appears to dispute this.

Applicable Law

California law recognizes that parties to a contract may define their duties to one another in the event of a third-party claim against one or both arising out of their relationship. *Crawford v. Weather Shield Mfg., Inc.*, 44 Cal. 4th 541, 550 (2008). Generally, such indemnity agreements are construed under the same rules that govern the interpretation of other contracts. *Id.* Effect is to be given to the parties' mutual intent as ascertained from the contract's language if it is clear and explicit. *Id.* Unless the parties have indicated a special meaning, the contract's words are to be understood in their ordinary and popular sense. *Id.*

11

“A contractual promise to ‘defend’ another against specified claims connotes an obligation of active responsibility, from the outset, for the promisee’s defense against such claims. The duty promised is to render, or fund, the service of providing a defense on the promisee’s behalf—a duty that necessarily arises as soon as such claims are made against the promisee, and may continue until they have been resolved. This is the common understanding of the word ‘defend’ as it is used in legal parlance is to “represent (someone) as an attorney.” *Id.* (quotations omitted).

“[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) the resulting damages to plaintiff.” *Oasis West Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011).

Analysis

The Master Service Agreement contains an exception to the indemnity clause, namely “excepting only such claims as are the result of the sole active negligence or intentional misconduct of PKW or a Client.” Defendant Auto Trackers assert that Plaintiffs are bringing separate claims against Defendant Santander for negligence and therefore it does not have a duty to defend. It maintains that, at the minimum, questions of material fact exist regarding whether this exception applies and whether it is required to indemnify Defendant Santander.

Here, under the plain language of the contract, Defendant Auto Trackers has a duty to defend Defendant PK Willis and its clients (Defendant Santander) against any claims arising from or relating to Defendant Auto Trackers. In reviewing the facts of the Complaint, it is clear that Plaintiffs' claims arise from or relate to Defendant Auto Trackers' conduct and are not based on the "sole active negligence or intentional misconduct" of Defendant Santander. As such, the contractual duty

1 to defend is triggered and Defendant Auto Trackers breached this duty by failing to
 2 tender a defense for Defendant Santander. Consequently, summary judgment on
 3 Defendant's claims for declaratory judgment and breach of contract is appropriate.

4 **2. Defendant PK Willis' Motion for Summary Judgment, ECF No.**

5 **33**

6 Defendant PK Willis asserts that summary judgment is appropriate because
 7 Defendant Auto Trackers was an independent contractor and as such, it is not
 8 vicariously liable for any alleged wrongdoing on the part of Defendant Auto
 9 Trackers. Defendant PK Willis also argues that Plaintiffs cannot prove an essential
 10 element of their Consumer Protection Act claim.

11 Plaintiffs assert Defendant PK Willis has a non-delegable duty to not breach
 12 the peace during a repossession, citing to Washington law. As such, Defendant PK
 13 Willis is liable for Defendant Auto Trackers' conduct even if Auto Trackers acted
 14 as an independent contractor. Plaintiffs also argue that regardless, PK Willis should
 15 be held vicariously liable for Auto Trackers' actions.

16 **Applicable Law**

17 In Washington, a repossession is lawful where there is a contractual right to
 18 repossess, and it is accomplished without disturbing the peace. *Jackson v. Peoples*
 19 *Fed. Cred. Union*, 25 Wash. App. 81, 88 (1979). “A breach of the peace is a public
 20 offense done by violence, or one causing or likely to cause an immediate
 21 disturbance of public order. *Ragde v. Peoples Bank*, 53 Wash. App. 173, 176
 22 (1989). “To constitute a ‘breach of the peace’ it is not necessary that the peace be
 23 actually broken, and if what is done is unjustifiable and unlawful, tending with
 24 sufficient directness to break the peace, no more is required, nor is actual personal
 25 violence an essential element of the offense.” *Id.* However, merely causing noise
 26 while repossessing a vehicle is insufficient, as a matter of law, to demonstrate a
 27 breach of the peace. *Id.*

28 //

1 **A. Vicarious Liability**

2 Under respondeat superior, an employer is vicariously liable to third parties
 3 for torts committed by the servant within the scope of employment. *Wilcox v.*
 4 *Basehore*, 187 Wash. 2d 772, 783 (2017) (citing to *Restatement (Second) of*
 5 *Agency* § 219 (1958)). The *Restatement* defines a servant as a person employed to
 6 perform services for another and who is subject to the other's control while
 7 performing those services. § 220(1). Generally, the terms "master-servant" are
 8 considered synonymous with "employer-employee." See *id.* § 220, comment g.

9 In order to hold an employer vicariously liable for the tortious acts of its
 10 employees, it must be established that the employee was acting in furtherance of
 11 the employer's business and that he or she was acting within the course and scope
 12 of employment when the tortious act was committed. *Thompson v. Everett Clinic*,
 13 71 Wash. App. 548, 551 (1993).

14 The *Restatement* provides a flexible ten-factor test to determine whether
 15 there is sufficient control so that the person providing services is a servant:

16 (a) the extent of control which, by the agreement, the master may exercise
 17 over the details of the work;

18 (b) whether or not the one employed is engaged in a distinct occupation or
 19 business;

20 (c) the kind of occupation, with reference to whether, in the locality, the
 21 work is usually done under the direction of the employer or by a specialist without
 22 supervision;

23 (d) the skill required in the particular occupation;

24 (e) whether the employer or the workman supplies the instrumentalities,
 25 tools, and the place of work for the person doing the work;

26 (f) the length of time for which the person is employed;

27 (g) the method of payment, whether by the time or by the job;

28 (h) whether or not the work is part of the regular business of the employer;

- 1 (i) whether or not the parties believe they are creating the relation of master
 2 and servant; and
 3 (j) whether the principal is or is not in business.

4 *Chapman v. Black*, 49 Wash. App. 94, 98-99 (1987).

5 The crucial factor is the right of control that must exist to prove agency. *Id.*
 6 That said, the retention of the right to inspect and supervise and to ensure the
 7 proper completion of the contract does not vitiate the independent contractor
 8 relationship. *Id.* It is not necessary that all of the remaining factors be present
 9 because no single one of them is conclusive and all relate, directly or indirectly, to
 10 the crucial factor of control or right of control. *Id.*

11 If the evidence conflicts regarding the relationship between the parties at the
 12 time of the injury or if the evidence is reasonably susceptible of more than one
 13 inference, then the question is one of fact for the jury. *Id.* If the evidence is
 14 undisputed, the question is one of law and left to the court for its determination. *Id.*

15 The general rule under Washington law is that a principal is not liable for
 16 injuries caused by an independent contractor whose services are engaged by the
 17 principal. *Stout v. Warren*, 176 Wash. 2d 263, 269 (2012). There are various
 18 exceptions to this general rule. One exception is found in §§ 416¹ and 427² of the
 19

20 ¹ Section 416 provides as follows:

21 One who employs an independent contractor to do work which the
 22 employer should recognize as likely to create during its progress a peculiar
 23 risk of physical harm to others unless special precautions are taken, is
 24 subject to liability for physical harm caused to them by the failure of the
 25 contractor to exercise reasonable care to take such precautions, even though
 26 the employer has provided for such precautions in the contract or otherwise.

27 ² Section 427 provides as follows:

28 One who employs an independent contractor to do work involving a
 29 special danger to others which the employer knows or has reason to know
 30 to be inherent in or normal to the work, or which he contemplates or has

1 *Restatement (Second) of Torts*, which permits vicarious liability for activities that
 2 (a) involves a “special danger” that is “inherent in or normal to the work,” *id.* §
 3 427, or (b) poses a “peculiar risk of physical harm,” *id.* § 416. *Id.* at 267.
 4 Washington courts refer to this exception as “peculiar-risk vicarious liability.” *Id.*
 5 A “peculiar risk of physical harm to others is one that arises out of the same
 6 character of the work to be done and that is not a normal routine matter of
 7 customary human activity.” *Id.* (quotation omitted). An activity posing a peculiar
 8 risk does not create strict liability. *Id.* Notably, in *Stout*, the Washington Supreme
 9 Court concluded that fugitive defendant apprehension is an activity that poses a
 10 peculiar risk of harm and can result in a principal’s vicarious liability for the
 11 negligence of an independent contractor.³ *Id.* at 270.

12 Under Washington law, then, in order for peculiar-risk vicarious liability to
 13 apply “(1) the activity itself must pose a risk of physical harm absent special or
 14 reasonable precautions (*i.e.* the risk must be inherent to the activity), (2) the risk
 15 must ‘differ[] from the common risks to which persons in general are commonly
 16 subjected,’ *id.* § 416 cmt. d, (*i.e.*, the risk must be “peculiar” or “special”), (3) the
 17 principal must know or have reason to know of the risk, and (4) the harm must
 18 arise from the contractor’s negligence with respect to the risk that is inherent in the
 19 activity, *see id.* § 426.” *Id.* at 274. Elements (1) and (2) are questions of law. *Id.*

20
 21 reason to contemplate when making the contract, is subject to liability for
 22 physical harm caused to such others by the contractor’s failure to take
 23 reasonable precautions against such danger.

24 ³ The *Stout* court also concluded that fugitive defendant apprehension is not an
 25 abnormally dangerous activity because while the record indicated that there is
 26 always a risk of some harm, it did not demonstrate the requisite “high degree of
 27 risk” when reasonable care is exercised. *Id.* Additionally, there was no showing of
 28 a likelihood that the harm would be great with reasonable precautions, rather it was
 merely a possibility. *Id.*

1 Elements (3) and (4) are mixed questions of law and fact because they
 2 involve circumstances that will vary from one case to the next, even given an
 3 identical activity. *Id.*

4 **Analysis**

5 Here, summary judgment is not appropriate because genuine issues of
 6 material fact exist regarding whether Defendant PK Willis should be held
 7 vicariously liable for the actions of Defendant Auto Trackers.⁴ Specifically, there
 8 are questions of material facts regarding the relationship between Defendant PK
 9 Willis and Defendant Auto Trackers at the time of the injury.

10 Also, questions of fact remain regarding whether Defendant PK Willis
 11 should be held liable based on peculiar-risk vicarious liability. Similar to fugitive
 12 defendant apprehension, there is a peculiar risk of harm absent special precautions
 13 with respect to repossession of vehicles. Similar to fugitive defendant
 14 apprehension, with vehicle repossession, there is a risk that the recovery agent's
 15 negligent actions will cause the vehicle owner to respond in a manner that causes
 16 physical harm to others. The risks peculiar to and inherent in vehicle repossession
 17 differ from common risks to which members of the public are generally subjected.
 18 If the recovery agent mistakenly takes the wrong vehicle and the owner resorts to
 19 extreme measures to stop it, *i.e.* brandishing or using a weapon, members of the
 20 public would be subject to the risk of being caught in the cross fire. *See e.g. Stout,*
 21 178 Wash.2d at 274. As such, the Court finds, as a matter of law, that elements (1)
 22 and (2) have been met. On the other hand, questions of fact remain regarding
 23 whether elements (3) and (4) are met.

24 Thus, even if the jury decides that Defendant Auto Trackers is an

25
 26⁴ Whether Defendant PK Willis will be held vicariously liable is a question that
 27 will need to be answered for all claims asserted by Plaintiff, including the tort-based
 28 claims of assault, battery, and false imprisonment.

1 independent contractor, genuine issues of material fact exist regarding what
 2 Defendant PK Willis knew about the risks and whether the harm arose from
 3 Defendant Auto Trackers' negligence with respect to the risk that is inherent in the
 4 activity.

5 Finally, genuine issues of material fact exist whether PK Willis ratified
 6 Defendant Auto Trackers' conduct.

7 **B. Washington Consumer Protection Act claim**

8 Defendant PK Willis moves for summary judgment on Plaintiffs'
 9 Washington Consumer Protection Act claim arguing that Plaintiffs did not suffer
 10 injury to his business or property as a result of the alleged CPA violation, and
 11 Plaintiffs cannot prove the "unfair or deceptive act" prong as against it. In its reply,
 12 it argues that Plaintiffs' CPA fails as a matter of law because there was no
 13 independent act on the part of PK Willis and asserts that because PK Willis is not
 14 vicariously liable for the acts of Defendant Auto Trackers, there can be no CPA
 15 liability.

16 **Applicable Law**

17 To survive summary judgment on his Washington Consumer Protection Act
 18 ("CPA") claim, Plaintiffs must make a prima facie showing of five elements: (1)
 19 an unfair or deceptive act or practice; (2) in trade or commerce; (3) that affects the
 20 public interest; (4) an injury to plaintiff in his or her business or property; and (5) a
 21 causal link between the unfair or deceptive act and the injury suffered. *Hangman*
Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wash. 2d 778, 784–85
 22 (1986). The CPA must be liberally construed to serve its purpose, which is "to
 23 complement the body of federal law governing restraints of trade, unfair
 24 competition and unfair, deceptive, and fraudulent acts or practices in order to
 25 protect the public and foster fair and honest competition." *Id.*; Wash. Rev Code
 26 19.86.920.

27 Because the CPA does not define 'unfair' or 'deceptive,' Washington courts

1 have allowed the definitions to evolve through a “gradual process of judicial
 2 inclusion and exclusion.” *Klem v. Wash. Mut. Bank*, 176 Wash. 2d 771, 786 (2013)
 3 (citation omitted). In *Klem*, the Washington Supreme Court clarified that a claim
 4 under the Washington CPA may be predicated upon a per se violation of statute⁵,
 5 an act or practice that has the capacity to deceive substantial portions of the public,
 6 or an unfair or deception act or practice not regulated by statute but in violation of
 7 public interest. *Id.* The court noted that an act or practice can be unfair without
 8 being deceptive. *Id.*

9 Washington courts have considered the following criteria in determining
 10 whether a practice or act is “unfair:”

11 (1) whether the practice, without necessarily having been previously
 12 considered unlawful, offends public policy as it has been established by
 13 statutes, the common law or otherwise—whether, in other words, it is within
 14 at least the penumbra of some common-law, statutory, or other established
 15 concept of unfairness; (2) whether it is immoral, unethical, oppressive, or
 unscrupulous; (3) whether it causes substantial injury to consumers (or
 competitors or other businessmen).”

16 *Rush v. Blackburn*, 190 Wash. App. 945, 963 (2015) (citing *Magney v.*
 17 *Lincoln Mt. Sav. Bank*, 34 Wash. App. 45, 57 (1983)).

18 Additionally, the courts have noted that current federal law suggests that a
 19 “practice is unfair [if it] causes or is likely to cause substantial injury to consumers
 20 which is not reasonably avoidable by consumers themselves and not outweighed by
 21 countervailing benefits.” *Id.* (citing *Klem*, 176 Wash. 2d at 787).

22 Whether the public has an interest in any given action is to be determined by
 23

24 ⁵In *Smart v. Emerald City Recovery, LLC*, Judge Coughenour noted that because
 25 Wash. Rev. Code 62A.9A-609 permitted non-judicial repossession of vehicles and
 26 it did not specifically establish that a violation of the section constitutes an unfair
 27 or deceptive act in trade or commerce, a violation of this statute was not a per se
 28 violation of the CPA. 2018 WL 3569873 (W.D. Wash. July 25, 2018).

1 the trier of fact from several factors, depending upon the context in which the
 2 alleged acts were committed: (1) Were the alleged acts committed in the course of
 3 defendant's business? (2) Are the acts part of a pattern or generalized course of
 4 conduct? (3) Were repeated acts committed prior to the act involving plaintiff? (4)
 5 Is there a real and substantial potential for repetition of defendant's conduct after
 6 the act involving plaintiff? (5) If the act complained of involved a single
 7 transaction, were many consumers affected or likely to be affected by it? *Id.* The
 8 likelihood that additional plaintiffs have been or will be injured in exactly the same
 9 fashion can change a private dispute to one that affects the public interests. *Id.*

10 To show causation, "plaintiff must establish that, but for the defendant's
 11 unfair or deceptive practice, the plaintiff would not have suffered an injury."

12 *Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc.*, 162 Wash. 2d 59,
 13 84 (2007). The injury requirement is met upon proof that the plaintiff's "property
 14 interest or money is diminished because of the unlawful conduct even if the
 15 expenses caused by the violation are minimal." *Panag v. Farmers Ins. Co. of*
 16 *Wash.*, 166 Wash. 2d 27, 57 (2009). Pecuniary losses occasioned by inconvenience
 17 may also be recoverable as actual damages. *Id.* Causation is generally a question
 18 for the jury. *Klem*, 176 Wash. 2d at 795.

19 Analysis

20 Here, the Court finds that as a matter of law, breaching the peace while
 21 repossessing a vehicle is an unfair practice that affects public interest. A reasonable
 22 jury could find that by wrongfully repossessing the vehicle, Defendant Auto
 23 Trackers caused Plaintiffs to suffered injuries. As such, summary judgment on the
 24 Consumer Protection Act claim is not appropriate.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant PK Willis's Motion for Partial Summary Judgment Regarding
3 Cross-Claims Against Auto Trackers and Recovery North LLC, ECF No.
4 35, is **GRANTED**.

5 2. Defendant PK Willis's Motion for Summary Judgment, ECF No. 31, is
6 **DENIED**.

7 3. Defendant's Motion to Strike, ECF No. 82, is **DENIED**.

8 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
9 file this Order and provide copies to counsel.

10 **DATED** this 10th day of June 2021.



14 Stanley A. Bastian

15 Stanley A. Bastian
16 Chief United States District Judge
17